



***PROCEDURE AND PRIVILEGES
COMMITTEE***

**REPORT ON PERSONS REFERRED TO
IN THE LEGISLATIVE ASSEMBLY**

MR PAUL FREWER

REPORT NO. 2

2008

Presented by Ms Dianne Guise, MLA
Deputy Speaker of the Legislative Assembly
Laid on the Table of the Legislative Assembly
3 April 2008

Published and printed by the Legislative Assembly, Parliament of Western Australia,
Perth, 2008.



Procedure and Privileges Committee

Title: Report on persons referred to in the Legislative Assembly: Mr Paul Frewer.

(Series: Western Australia. Parliament. Legislative Assembly. Committees.
Procedure and Privileges Committee. Report No. 2 of 2008)

COMMITTEE MEMBERS

Chairman

Hon. Fred Riebeling, MLA
(Speaker of the Legislative Assembly)

Members

Ms Dianne Guise, MLA
(Deputy Speaker and Member for Wanneroo)

Mr Paul Andrews, MLA
(Member for Southern River)

Mr Rob Johnson, MLA
(Member for Hillarys)

Mr Max Trenorden, MLA
(Member for Avon)

STAFF

**Principal Research Officer and
Clerk to the Committee**

Ms Liz Kerr

Adviser

Mr Peter McHugh
Clerk of the Legislative Assembly

Adviser

Mr John Mandy
Deputy Clerk of the Legislative
Assembly

COMMITTEE ADDRESS

Procedure and Privileges Committee
Legislative Assembly
Parliament House
Harvest Terrace
PERTH WA 6000

Tel: (08) 9222 7222
Fax: (08) 9222 7818
Email: ppc@parliament.wa.gov.au
Website: www.parliament.wa.gov.au

COMMITTEE'S FUNCTIONS AND POWERS

Legislative Assembly Standing Order No. 284 provides the following functions, powers and terms of reference to the Procedure and Privileges Committee -

Procedure and Privileges Committee

284. (1) A Procedure and Privileges Committee will be appointed at the beginning of each Parliament to -
- (a) examine and report on the procedures of the Assembly; and
 - (b) examine and report on issues of privilege; and
 - (c) wherever necessary, confer with a similar committee of the Council.
- (2) Membership of the committee will consist of the Speaker and four other members as the Assembly appoints.
- (3) Standing Order 278 will apply except that where possible any report of the committee will be presented by the Deputy Speaker.
- (4) When consideration of a report from the committee is set down as an order of the day it will be considered using the consideration in detail procedure.

REPORT

The Speaker of the Legislative Assembly referred to the Procedure and Privileges Committee a letter dated 1 April 2008 from Mr Paul Frewer, seeking to use Standing Order 114 to respond to comments made on in a report tabled in the Legislative Assembly, specifically:

- The Corruption and Crime Commission's 9 October 2008 *Report on the Investigation of Alleged Public Sector Misconduct Linked to the Smiths Beach Development at Yallingup*.

The Committee has agreed to the attached response proposed by Mr Frewer.

In accordance with Standing Order 114 the Committee has not considered or judged the truth of any statements made in the Corruption and Crime Commission's report or in the submission.

Recommendation

Your Committee recommends –

That a response by Mr Paul Frewer in the terms specified in the Appendix to this report, be incorporated in *Hansard*.

HON. FRED RIEBELING, MLA
CHAIRMAN OF THE COMMITTEE
3 April 2008

APPENDIX

RESPONSE BY MR PAUL FREWER

AGREED TO BY MR PAUL FREWER AND THE PROCEDURE AND PRIVILEGES COMMITTEE PURSUANT TO STANDING ORDER 114

On 9 October 2007 the Corruption and Crime Commission tabled a report in Parliament titled Report on the Investigation of Alleged Public Sector Misconduct Linked to the Smiths Beach Development at Yallingup. That report made a number of findings and recommendations, including one referring to Mr Paul Frewer.

Page 76 of the CCC report contains the following opinion and recommendation:

5.3.1 Commission's Opinion on Mr Frewer's Conduct

On 19 May 2006, at a meeting of the South West Regional Planning Committee, Mr Frewer recommended deferring consideration of a Shire of Busselton proposal to amend Town Planning Scheme (TPS) 20. This deferral was in the interest of Canal Rocks Pty Ltd.

Mr Frewer's conduct in failing to declare that he had been approached by Mr Burke to speak in favour of the deferral of Amendment 92 constitutes the performance of functions as a public officer in a manner that was not impartial. The conduct could constitute a serious breach of the Public Sector Code of Ethics in that there was a failure to act with integrity in the performance of official duties. This conduct constitutes misconduct pursuant to subparagraphs 4(d)(ii) and (vi) of the CCC Act.

The Commission therefore recommends:

That the appropriate relevant authority should consider taking disciplinary action against Paul Frewer for his lack of integrity in seeking the deferral of Amendment 92 at the request of Mr Burke at the 19 May 2006 meeting of the South West Regional Planning Committee.

Subsequent to that recommendation the Director General for the Department for Planning and Infrastructure (DPI) undertook an investigation, conducted by Ms Petrice Judge, a senior officer of the Department of Premier and Cabinet. That report was prepared in accordance with the lawful procedures set out in the Public Sector Management Act 1994.

The investigation report was finalised in mid January 2008 and a summary of its findings was released by the DPI on its website in early February 2008, including:

- Mr Frewer asserted that he did not receive any emails from Mr Burke regarding the deferment of Amendment 92. Counsel assisting the CCC confirmed that the two emails were sent to the wrong email addresses and indicated that it was unlikely that Mr Frewer would have received either of the emails.
- Therefore, it was demonstrated that Mr Burke did not inform Mr Frewer by telephone or email that he wished the amendment to be deferred.

- A review of the voice recording of the 19 May 2006 SWRPC meeting demonstrated that Mr Frewer declared an approach about the amendment issue but did not name Mr Burke. Mr Frewer indicated that he had not received, however, any follow-up information providing the details.
- The voice recording confirms that Mr Frewer did not cause the deferral of the amendment. Mr Frewer's action in supporting the concerns expressed first by other Committee members was regarded as appropriate, proper and professional.

After considering all of the evidence, the Director General of the DPI was satisfied that there was no breach of discipline.

On 8 February 2008 the Parliamentary Inspector for the CCC, Mr Malcolm McCusker, tabled an independent review of the CCC Report and concluded, inter alia, that there was no justification for the Commission's finding that Mr Paul Frewer was guilty of "misconduct", nor for recommending that a "relevant authority" consider taking disciplinary action against him.

Both the Public Sector Management Act investigation and the report by the Parliamentary Inspector arrived at similar conclusions that Mr Paul Frewer had no case to answer. Furthermore, the Parliamentary Inspector described the public accusations of misconduct as "extremely prejudicial."

I wish for it to be recorded on the public record that the release of the CCC report on 9 October 2007 has caused enormous strain on me and my family and has had a demonstrably adverse impact on my career.

There has to be a better way of handling these matters in the future. In his report, the Parliamentary Inspector made some excellent recommendations to the CCC as to how its processes in misconduct cases can be managed in order to improve their procedural fairness. In my view, it is imperative that these recommendations are followed by the CCC in future.

I respectfully thank you for your consideration of this request.

Yours faithfully

Mr Paul Frewer